

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|  |   |                            |
|--|---|----------------------------|
| <b>In the Matter of</b>                      | ) |                            |
| <b>Telecommunications Relay Services and</b> | ) |                            |
| <b>Speech-to-Speech Services for</b>         | ) | <b>CC Docket No. 98-67</b> |
| <b>Individuals with Hearing and Speech</b>   | ) |                            |
| <b>Disabilities</b>                          | ) |                            |

**REPLY COMMENTS OF WORLDCOM, INC. d/b/a MCI**

**Larry Fenster  
MCI  
1133 19<sup>th</sup> St., NW  
Washington, DC 20036  
202-736-6513**

**July 1, 2003**

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## I. SUMMARY

In its *Internet Relay Order* the Commission found that IP Relay was a telecommunications relay service (TRS) and IP Relay providers would be reimbursed out of the Interstate TRS Fund. The Commission granted waivers from certain of its mandatory minimum requirements, but did not waive its HCO or pay-per-call requirements.

The *Internet Relay Order* required IP Relay providers to use IP Relay for the text leg of an HCO call. This could be accomplished by providing two-line HCO, which MCI provided. In any case, nowhere do the Commission's rules specify that single line HCO was the only means the HCO requirement could have been satisfied. The *Internet Relay Order* also did not waive the pay-per-call requirement. The Order recognized that pay-per-call providers would not be able to bill to a caller's originating automatic number identification (ANI), since the call originated on the Internet. So, it required IP Relay providers to manually pass a caller's credit card or telephone number to the pay-per-call provider. The Commission expected that pay-per-call providers would accept this alternate billing information. MCI did as well. However, after months of attempting to pass alternate billing information, MCI did not succeed in finding a single pay-per-call provider who was willing to accept alternate billing information. MCI does not believe it was required to allow itself to be billed for calls placed by relay customers, since it had no control over the billing decisions of pay-per-call providers. Moreover, the Commission's relay rules exempt TRS providers from carrying any call if the caller does not receive credit authorization to complete a call. In any case, by October, 2002, MCI allowed its relay center to be billed for pay-per-call calls and customers were obtaining free, unbilled, access to pay-per-call services. MCI therefore believes it fully complied with the pay-per-call and HCO requirements as they were articulated in the Internet Relay Order.

MCI did not become aware of the possibility that the Commission might be considering limiting the provision of HCO to only single line HCO until November, 2002, after Sprint filed a Notice of Ex Parte describing how NECA had denied them reimbursement for failing to provide single line HCO. The Ex Parte also indicated that the Commission would retroactively reimburse Sprint for providing IP-Relay for 3 months prior to the date of any Order waiving the single line HCO and pay-per-call requirements, so IP-Relay providers had expectation of some retroactive reimbursement. MCI subsequently explained to the Commission how it had complied with the Internet Relay Order by providing two-line HCO and access to pay-per-call services. MCI also supported Sprint's request for this retroactive reimbursement to be extended beyond the dates suggested by NECA, and back to the date of the *Internet Relay Order*.

In the event the Commission states that only single line HCO satisfied its HCO requirement, the Commission should grant Sprint's request for retroactive waiver of this and the pay-per-call requirement. The Commission waived its "coin sent paid" requirement for two years in November 29, 1993, made the waiver's application retroactive back to July 26, 1993, and did not deny TRS providers reimbursement for calls beginning July 1993. Similarly, the Commission has recently stated that a TRS provider is "eligible for TRS fund reimbursement if it has substantially complied with Section 64.604." There is no doubt that MCI and other providers of IP Relay substantially complied with the Commission's TRS requirements. HCO and pay-per-call services comprise less than one-tenth of one percent of relay calls. There does not need to be a concern that granting retroactive waivers in this case will encourage carriers to provide regulated services in contravention of its rules, with the hope they will eventually be retroactively rewarded for providing the services. The present circumstances are special, are not easily reproduced, and will therefore not encourage providers to break Commission rules. On

the other hand, if the Commission denies retroactive waivers for minor deviations from requirements that were technically infeasible to comply with, it will establish a precedent that uncompetitive providers can delay the introduction and diffusion of innovative relay technologies for years to come.

It is clear that the *Internet Relay Order* had a number of shortcomings, which parties legitimately responded to in different ways. The Order had an unusual HCO requirement, which could have been viewed as requiring either single line or two-line HCO. The *Internet Relay Order* also required Internet relay providers to hold the line open to allow a pay-per-call provider to accept alternate billing methods. Some parties were convinced that pay-per-call providers would not accept alternate billing methods and concluded access to pay-per-call services was not feasible, and others thought it was a possibility and attempted to provide access to pay-per-call services. MCI legitimately believed it was complying with the HCO and pay-per-call requirements and received reimbursement from NECA. Sprint took a different interpretation of the requirements, but legitimately expected to be reimbursed upon waiver of the HCO and pay-per-call requirements because the *Internet Relay Order* was not final, because it had substantially provided TRS services, and because the Commission had issued similar waivers generally, and specifically in the context of TRS service. Hamilton claims to have been ready to provide IP-Relay prior to the release of the *Order on Reconsideration*, but does not back up this claim. All Internet Relay providers held public trials of their services prior to the release of the *Internet Relay Order*, except Hamilton. There is no way to substantiate the extent of the harm Hamilton purports to have suffered.

MCI reminds the Commission that it provided consumers access to this innovative service without any reimbursement for 16 months prior to its authorization in April 2002. By

this time an extremely large pent-up demand for the service among the user community had developed. Had the Commission waited another year before allowing service to be reimbursed, the consuming public would have been poorly served. MCI recognizes that there are equity issues involved here, and urges the Commission to recognize that AT&T, Sprint and MCI spent millions of dollars providing service prior to the *Order on Reconsideration*, substantially provided relay service, and that it cannot know with how much harm Hamilton suffered. In the event that the Commission determines that only single line HCO could have fulfilled the HCO requirement, MCI believes the equity interests of the parties can be balanced by reducing the amount of reimbursement received by the value of the HCO and pay-per-call calls that were not carried by IP-Relay providers between April 23, 2002 and March 14, 2003.<sup>1</sup>

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<sup>1</sup> MCI wishes to reiterate its view that it is entitled to full reimbursement since it provided two-line HCO and access to pay-per-call services.

## II. INTRODUCTION

WorldCom, Inc., d/b/a/ MCI respectfully submits this reply to comments filed by Hamilton Relay, Inc. (“Hamilton”) on June 16, 2003 in the above-captioned proceeding. In its *Internet Relay Order* the Commission found that IP Relay was a telecommunications relay service (TRS) and IP Relay providers would be reimbursed out of the Interstate TRS Fund. The Commission granted waivers from certain of its mandatory minimum requirements, but did not waive its HCO or pay-per-call requirements. MCI fully complied with these two requirements as they were articulated in the *Internet Relay Order*.

The *Internet Relay Order* required IP Relay providers to use IP Relay for the text leg of an HCO call.<sup>2</sup> This could be accomplished by providing two-line HCO. In any case, nowhere do the Commission’s rules specify that single line HCO was the only means the HCO requirement could have been satisfied. The *Internet Relay Order* also did not waive the pay-per-call requirement. The Order recognized that pay-per-call providers would not be able to bill to a caller’s originating automatic number identification (ANI), since the call originated on the Internet. So, it required IP Relay providers to manually pass a caller’s credit card or telephone number to the pay-per-call provider. The Commission expected that pay-per-call providers would accept this alternate billing information. MCI did as well. However, after months of attempting to pass alternate billing information, MCI did not succeed in finding a single pay-per-call provider who was willing to accept alternate billing information. Initially, MCI would disconnect the call if the pay-per-call provider did not accept alternate billing methods. Starting October, 2002, MCI allowed its relay center to be billed for pay-per-call calls. MCI does not

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<sup>2</sup> *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc., Declaratory Ruling and Second Further Notice of Proposed Rulemaking, (Internet Relay Order)*, CC Docket No. 98-67, April 22, 2002, &32.

believe it was required to allow itself to be billed for calls placed by relay customers, since it had no control over the billing decisions of pay-per-call providers. Moreover, the Commission's relay rules exempt TRS providers from carrying any call if the caller does not receive credit authorization to complete a call. In any case, by October, 2002 MCI's IP Relay customers were obtaining free, unbilled access to pay-per-call services. MCI therefore believes it fully complied with the pay-per-call and HCO requirements as they were articulated in the Internet Relay Order and is entitled to full reimbursement from the TRS fund.

### **III. RETROACTIVE WAIVERS ARE PERMITTED IF THEY BENEFIT THE CONSUMING PUBLIC**

In the event the Commission determines that the HCO requirement in its Internet Relay Order could only be fulfilled by providing single line HCO, MCI also supports Sprint's petition to grant retroactive application of the single line HCO and pay-per-call requirements. The Commission has granted many such waivers generally, and has done so specifically with request to relay services. Hamilton first argues that Sprint failed to provide direct legal support for authorizing retroactive waivers, but addresses only two of a dozen supporting cases provided by Sprint and MCI.<sup>3</sup> Hamilton addresses only two cases, the *Rath Microtech*<sup>4</sup> decision and the *Publix Show Cause Order*.<sup>5</sup> With regard to *Rath Microtech*, Hamilton asserts that refusing to take an enforcement action against an individual is far different than authorizing retroactive

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<sup>3</sup> Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Comments of Hamilton Relay, Inc., (*Hamilton Comments*), CC Docket No. 98-67. See Petition for Limited Reconsideration, Sprint, (*Sprint Petition*) CC Docket No. 98-67, April 24, 2003, at 13, 15-18. See also *MCI Petition* at 14-18.

<sup>4</sup> *Rath Microtech Complaint Regarding Electronic Micro Systems, Inc., Elevator Emergency Telephones; Electronic Micro Systems, Inc., Petition for Waiver*, 16 FCC Rcd 16710, 16713-16714 (2001).

<sup>5</sup> *In the Matter of Publix Network Corporation; Customer Attendants, LLC; Revenue Controls Corporation; SignTel, Inc.; and Focus Group, LLC; Order to Show Cause and Notice of Opportunity for Hearing, Order to Show Cause and Notice of Opportunity for Hearing (Publix Show Cause Order)*, 17 FCC Rcd 11487, 11494 (2002)



recovery for some carriers but not others.<sup>6</sup> However, as the MCI petition showed, there was another party who was harmed in each of the many cases where the Commission has approved retroactive waivers, including *Rath Mircrotech*.<sup>7</sup> In all of these cases approving retroactive application of waivers, the Commission rightly focused on whether the waiver would benefit the general consuming public. In this case the waivers support the public interest because AT&T, MCI and Sprint spent millions of dollars providing service and completed millions of relay calls. Denying retroactive waivers for minor technically infeasible requirements will also encourage competitors who are not ready to offer an innovative service to look for any difficulty an innovating company might have in meeting a requirement, even an insubstantial one, in order to gain time to develop a competing service. In addition, such an action would make it more difficult to solve a number of technical problems in the next five years, including the ability to access IP Relay by voice, the ability to pass originating location information to the nearest public service answering point, and the ability to provide single line HCO.

#### **IV. THE COMMISSION DOES SUPPORT REIMBURSEMENT IF SUBSTANTIAL RULE COMPLIANCE HAS OCCURRED**

Hamilton asserts that the *Publix Show Cause Order* does not apply in the present instance, but fails to convincingly explain its assertion. Hamilton states the *Publix Show Cause Order* was concerned with whether an entity is a legitimate TRS provider who substantially complied with TRS minimum standard requirements.<sup>8</sup> MCI agrees. The Commission clearly

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<sup>6</sup> *Hamilton Comments* at 6.

<sup>7</sup> *MCI Petition* at 22 (“In that case the retroactive waiver granted to EMS and its customers, denied Rath Microtech the ability to market its elevator phones since EMS’ phones did not need to be removed. The retroactive waivers granted to Lebanon and Newport News reduced the amount of E-rate funds available for other schools and libraries. And the retroactive waivers granted to late-filing eligible telecommunications providers required the customers of interexchange carriers to contribute greater sums of money to the Universal Service Fund.”)

<sup>8</sup> *Hamilton Comments* at 7.

stated its view that “a TRS provider is eligible for TRS Fund reimbursement if it has substantially complied with Section 64.604.” The Commission also stated that “a finding that an insignificant violation of the requirements of the implementing regulations does not render [an entity] ineligible so long as [it has] satisfied the underlying purposes of those requirements.”<sup>9</sup>

It is indisputable that Sprint, MCI, and AT&T substantially complied with TRS minimum standard requirements and satisfied the underlying purposes of those requirements.<sup>10</sup> As MCI’s Petition showed, these three relay providers complied with the HCO requirement as articulated in the *Internet Relay Order*.<sup>11</sup> The only requirement really at issue is whether AT&T and Sprint were providing access to pay-per-call services.<sup>12</sup> MCI believes the evidence strongly shows that not providing access to pay-per-call services was an insignificant violation of the TRS requirements. Pay-per-call calls accounted for only .005% of MCI’s traditional relay calls. MCI expects Sprint and AT&T had similarly low volumes of pay-per-call calls on their relay systems. It is hard to conceive of a clearer case involving an insignificant violation of TRS requirements than failing to make .005% of calls to discretionary information service providers. Moreover, between the time the *Internet Relay Order* determined IP Relay was a relay service, and the waiver of the single line HCO and pay-per-call requirements in the *Reconsideration Order*,<sup>13</sup>

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<sup>9</sup> *Publix Show Cause Order*, &19.

<sup>10</sup> MCI reminds the reader that it fully complied with the HCO and pay-per-call requirements as articulated in the *Internet Relay Order*, and that any suggestion in these Reply Comments that it only substantially complied only pertains to the situation that would exist were the Commission to determine that the HCO requirement in the *Internet Relay Order* could only have been fulfilled by providing single line HCO.

<sup>11</sup> *MCI Petition* at 7-8.

<sup>12</sup> MCI was providing access to both HCO and pay-per-call services as articulated in the Order, and contrary to Hamilton’s distortions, never stated otherwise as will be explained below.

<sup>13</sup> *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc.*, Order on Reconsideration, (*Reconsideration Order*), CC Docket No. 98-67, March 14, 2003.

MCI did not receive a single informal or formal complaint about inability to use single line HCO or pay-per-call over IP Relay. MCI suspects that neither Sprint nor AT&T received complaints either.

If the Commission finds it necessary to penalize relay providers who offered IP-Relay service prior to March 14, 2003, it should take into account the fact that they substantively provided relay service, incurred real costs making this service available, and that the services they provided were exactly the same services they provided beginning March 15, 2003. While MCI maintains it provided HCO and pay-per-call as articulated in the Order, if the Commission were to find that two-line HCO did not satisfy the HCO requirement and that providing access to the pay-per-call platform and inquiring into alternate billing methods did not satisfy the pay-per-call requirement, the appropriate penalty would be to determine the extent to which TRS service was not provided by not making these services available. This is known to be approximately .06% of relay call volumes. An appropriate penalty therefore, would involve the return of .06% of revenues prior to March 14, 2003.<sup>14</sup>

## **V. RETROACTIVE WAIVERS WILL NOT ENCOURAGE RULE VIOLATIONS**

MCI does not believe that granting retroactive waivers in this case will encourage carriers to ignore the Commission's rules as Hamilton suggests. As MCI explained in its *Petition for Reconsideration*, the present circumstances are special and not easily reproduced; the infractions are extremely minor, they involve a new technology whose capabilities were not fully clear to the Commission; the user community did not suffer and in fact supported retroactive application of the waivers; and the Commission still would need to approve the waivers.<sup>15</sup>

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<sup>14</sup> And even then, MCI was connecting callers to pay-per-call service providers free of charge since October 2002.

<sup>15</sup> MCI Petition at 23.

Moreover, MCI complied with the HCO and pay-per-call requirements as they were articulated in the Order. Hamilton speaks as if the Order was both clear and without fault. But the Commission has subsequently concluded that the single line HCO requirement was in error. There is also no question that the manner in which the Commission articulated the HCO requirement was non-standard, to put it mildly. Moreover, it was possible for a relay provider to hold a line open to allow a pay-per-call provider to accept alternate billing methods as the Commission expected, and as implemented by MCI. But if pay-per-call providers refused to offer alternate billing methods, relay providers were not authorized to require them to do so. Nor is the Commission. Contrary to Hamilton's attempt to portray MCI's behavior as a clear rule violation, in fact MCI complied with the rules as they were expressed in the Internet Relay Order.

## **VI. MCI COMPLIED WITH THE HCO AND PAY-PER-CALL REQUIREMENTS**

In its *Internet Relay Order*, the Commission adopted two viewpoints on the feasibility of voice being carried over IP Relay. On the one hand, it clearly believed that voice and text over a single Internet connection was not technically feasible, for it completely waived the VCO requirement. Then, echoing discussion in the record of integrating voice over one line and text messaging over a separate Internet connection, the Commission then went on to state that it saw "...no reason why IP Relay cannot be used for the text leg of an HCO call, and therefore we do not waive this requirement."<sup>16</sup> Several parties in the record referred to the benefits of two-line HCO over IP-Relay.<sup>17</sup> As MCI discussed in its Petition, two-line HCO is the only means by

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<sup>16</sup> *Internet Relay Order*, & 32.

<sup>17</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Comments of: Katherine Keller, July 31, 2001 at 1; Reply Comments of Dana Mulvaney, August 20, 2001 at 4.

which a user could initiate an HCO call where only the text leg of the call is carried over the Internet. Hamilton maintains that no provision in the *Internet Relay Order* supported allowing two-line HCO to satisfy the HCO requirement, and that there is any discussion of two-line HCO in the Order.<sup>18</sup> Yet, the HCO requirement the Commission articulated in that very Order exactly fits the description of two-line HCO. Thus there was direct presentation of two-line HCO in the Order. In addition, there was specific discussion in the Order of the inability to offer single line voice in any form.<sup>19</sup> Provision of two-line HCO was the only service that could have been rationally intended. This was MCI's understanding as soon as the Order was released, and contrary to Hamilton's claim that MCI developed this understanding only recently,<sup>20</sup> MCI adopted its understanding as soon as the *Internet Relay Order* was released.

MCI also explained that even if the Commission didn't intend two-line HCO when it required IP Relay to be used for the text leg of an HCO call, providing two-line HCO would nevertheless satisfy the Commission's requirement to provide HCO, because HCO is defined as a "reduced form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability."<sup>21</sup> Consequently, it is not necessary to show that the Commission specifically labeled the HCO requirement as two-line HCO in the *Internet Relay Order*. Nowhere does the definition of HCO confine its meaning to single line HCO. Hamilton maintains that this definition can

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<sup>18</sup> Hamilton Comments at 9.

<sup>19</sup> Internet Relay Order, &32 ("IP Relay can only be accessed by text users. We believe that IP Relay should be available to voice users, but agree with commenters that technology and the marketplace should drive the pace at which Internet-based relay providers resolve the problems with providing voice access to IP Relay.")

<sup>20</sup> Hamilton Comments at 9 ("MCI subsequently developed the novel approach...")

<sup>21</sup> 47 C.F.R. § 64.601(7).

only be read to mean single line HCO, but in fact, two-line HCO exactly meets the service as defined in the Commission's rule. The rule makes no distinction whatsoever between single line and two-line HCO. And it is only one year after the release of the *Internet Relay Order* that the Commission has first proposed to *officially* make this distinction.<sup>22</sup>

Finally, MCI did not become aware of the possibility that the Commission might have a different view of its HCO requirement until Sprint disclosed it had been denied reimbursement by NECA in its October 31, 2002 Ex Parte Letter.<sup>23</sup> In its November 20, 2002 meeting with the Consumer and Governmental Affairs Bureau, MCI explained its view that the *Internet Relay Order* required two-line HCO. MCI also explained the steps it had taken to provide access to pay-per-call services. MCI maintained in that meeting that it had fully complied with the requirements of the *Internet Relay Order*. MCI's request in that letter to "reimburse providers who have been offering all mandated IP Relay services other than HCO and pay-per-call," rather than an admission it was not providing HCO or pay-per-call, referred instead to MCI's support for the positions advocated in Sprint's November 18, 2002 Ex Parte Letter. That is, MCI believed that carriers such as Sprint, who had not maintained that the *Internet Relay Order* required the provision of two-line HCO (as MCI maintained), and who had not offered access to pay-per-call services (as MCI had done) should be entitled to reimbursement.

## VII. CONCLUSION

For the reasons discussed herein, MCI respectfully requests Commission to grant its petition to clarify whether IP Relay providers were required to succeed in connecting to pay-per-

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<sup>22</sup> Telecommunications Relay Services Rules Modified, Comments Sought on Emerging Technology. Public Outreach Campaign and National Security Status of TRS, New Release at 2, rel. May 15, 2003. See Hamilton Comments at 10.

<sup>23</sup> Sprint Ex Parte Letter, CC Docket No. 98-67, October 31, 2002

call providers if they did not accept alternate billing methods, to reconsider its decisions to eliminate two-line HCO as a means by which IP Relay providers could satisfy the Hearing Carryover (HCO) requirement, and to reconsider its decision denying retroactive application of the single line HCO and pay-per-call waivers. The Commission does not need to be concerned that granting retroactive waivers in this case will encourage carriers to provide regulated services in contravention of its rules, with the hope they will eventually be retroactively rewarded for providing the services. The present circumstances are special, are not easily reproduced, and will not encourage providers to break Commission rules. First, service providers must substantially provide required services and capabilities. Any infractions would need to involve services or capabilities very infrequently used. Second, service providers would have to be very certain they would prevail in showing the requirement is not technically feasible. If they do not prevail, they would not be entitled to retroactive reimbursement. Third, providers must demonstrate that the waiver is in the public interest. If the violations are not inconsequential, the relay community will strongly oppose the petition. Finally, the present request for waivers involves a new relay technology. New technologies will inevitably require second-round adjustments to required standards. If the Commission identifies these as necessary conditions for granting retroactive waivers it will not be establishing a precedent or incentive for a flood of requests for retroactive waivers.

On the other hand, if the Commission denies retroactive waivers for minor deviations from requirements that were technically infeasible to comply with, it will establish a precedent that will delay the introduction and diffusion of innovative relay technologies for years to come. Innovators will be reluctant to begin to offer service if there is any ambiguity in the decision approving their service. It will also encourage competitors who are not ready to offer an

innovative service to look for any difficulty an innovating company might have in meeting a requirement, even an insubstantial one, in order to gain time to develop a competing service. The extremely rigid application of its requirements in the *Reconsideration Order* will invite such gaming. The Commission has a statutory obligation to ensure that its regulations do not discourage or impair the development of new relay technologies. If the Commission fails to grant retroactive waivers from extremely minor services, the provision of which turn out to be technically infeasible to provide, it will unleash negative forces that will retard the widespread adoption of future innovative relay services and be acting in opposition to its statutory mandate. In any case, Hamilton's proposal to completely deny funding is inappropriate. AT&T, Sprint, and MCI incurred millions of dollars in expenses, carried millions of relay calls, did not receive any complaints, and at most failed to carry .06% of possible relay calls. If any penalty is to be levied it would involve at most a reduction in revenues by .06%.<sup>24</sup>

Respectfully submitted,

**Larry Fenster**

Larry Fenster  
1133 19<sup>th</sup> St., NW  
Washington, DC 20036  
202-736-6513

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<sup>24</sup> MCI's reduction would differ depending on whether the Commission determined that only single line HCO would satisfy the HCO requirement, and whether attempting to provide access to pay-per-call services (but not providing free access) would satisfy the pay-per-call requirement.



## **Statement of Verification**

I have read the foregoing, and to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on July 1, 2003

**Larry Fenster**

**Larry Fenster**

1133 19<sup>th</sup> St., NW  
Washington, DC 20036  
202-736-6513

## Certificate of Service

I, L. Elizabeth Bryant, do hereby certify that copies of the foregoing Petition for Reconsideration of WorldCom Inc. were sent on this 1<sup>st</sup> day of July, 2003, via first-class mail, postage pre-paid, to the following:

Gary Cohen  
Lionel B. Wilson  
Helen M. Mickiewicz  
Jonady Hom Sun  
505 Van Ness Ave.  
San Francisco, CA 94102

Katherine Keller  
Publisher, STSnews.com  
P.O. Box 88  
Belleville, WI 53508

Michael B. Fingerhut  
Richard Juhnke  
Sprint Corporation  
401 9<sup>th</sup> Street, N.W., Suite 400  
Washington, D.C. 20004

\*Dana Mulvany, MSW, LCSW  
[dmulvaney@usa.net](mailto:dmulvaney@usa.net)

Brenda Battat  
SHHH  
Suite 1200  
7910 Woodmont Ave  
Bethesda, MD 20814

Karen Peltz-Strauss  
KPS Consulting  
3508 Albermarle St  
Washington, DC 20008

David O'Connor, Esq.  
Counsel for Hamilton Relay  
Holland & Knight LLP  
Suite 100  
2099 Pennsylvania Ave., NW  
Washington, DC 20006

Beth Wilson, Ph.D. Executive Director,  
SHHH  
401 9<sup>th</sup> Street, N.W., Suite 400  
Washington, D.C. 20004

Claude Stout  
Executive Director  
Telecommunications for the Deaf, Inc.  
8630 Fenton Street, Suite 604  
Silver Spring, MD 20910-3803

Ronald H. Vickery  
404 Benton Dr.  
Rome, Georgia 30165

Mark C. Rosenblum  
Peter H. Jacoby  
AT&T Corp.  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Nancy J. Bloch  
Executive Director  
National Association of the Deaf  
814 Thayer Avenue  
Silver Spring, MD 20910-4500

Qualex International  
[qualexint@aol.com](mailto:qualexint@aol.com)

**L. Elizabeth Bryant**

**L. Elizabeth Bryant**